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DOCUMENTS

NOTES ON SLAVERY IN CANADA[1]

The following Notes received from the Canadian Archives Department, Ottawa, have more or less bearing upon the question of slavery in Upper Canada:

1. General James Murray, the first Governor of the new Government of Quebec, writing to John Watts, of New York, from Quebec, November 2, 1763, and speaking of the promoting of the improvement of agriculture, says:

"I must most earnestly entreat your assistance, without servants nothing can be done, had I the inclination to employ soldiers which is not the case, they would disappoint me, and Canadians will work for nobody but themselves. Black Slaves are certainly the only people to be depended upon, but it is necessary, I imagine they should be born in one or other of our Northern Colonies, the Winters here will not agree with a Native of the torrid zone, pray therefore if possible procure for me two Stout Young fellows, who have been accustomed to Country Business, and as I shall wish to see them happy, I am of opinion there is little felicity without a Communication with the Ladys, you may buy for each a clean young wife, who can wash and do the female offices about a farm, I shall begrudge no price, so hope we may, by your goodness succeed." (*Can. Arch.*, Murray Papers, Vol. II, p. 15.)

2. D. M. Erskine, writing from New York, May 26, 1807, to Francis Gore, Lt. Governor of Upper Canada, says:

"I have the honour to acknowledge the receipt of your letter of the 24th ult enclosing a Memorial presented to you by the Proprietors of Slaves in the Western District of the Province of Upper Canada.

"I regret equally with yourself the Inconvenience which His

[1] For these documents Mr. Justice Riddell is indebted to Mr. William Smith of the Department of Archives, Ottawa, Canada.

Majesty's subjects in Upper Canada experience from the Desertions of their slaves into the Territory of the United States, and of Persons bound to them for a term of years, as also of His Majesty's soldiers and sailors; but I fear no Representation to the Government of the United States will at the present avail in checking the evils complained of, as I have frequently of late had occasion to apply to them for the Surrender of various Deserters under different circumstances, and always without success—

"The answer that has been usually given, has been. 'That the Treaty between Great Britain & the United States which *alone* gave them the Power to surrender Deserters having expired, it was impossible for them to exercise such an authority without the Sanction of the Laws—'

"I will however forward to His Majesty's Minister for Foreign Affairs, the Memorial above mentioned in the Hope that some arrangements may be entered into to obviate in future the great Losses which are therein described." (*Can. Arch.*, Sundries, Upper Canada, 1807.)

3. John Beverley Robinson, Attorney General, Upper Canada, giving an opinion to the Lt. Governor, York, July 8, 1819, says the following:

"May it please Your Excellency

"In obedience to Your Excellency's commands I have perused the accompanying letter from C. C. Antrobus Esquire, His Majesty's Chargé d'affaires at the Court of Washington and have attentively considered the question referred to me by Your Excellency therein—namely—'Whether the owners of several Negro slaves from the United States of America and are now resident in this Province' and I beg to express most respectfully my opinion to Your Excellency that the Legislature of this Province having adopted the Law of England as the rule of decision in all questions relative to property and civil rights, and freedom of the person being the most important civil right protected by those laws, it follows that whatever may have been the condition of these Negroes in the Country to which they formerly belonged, here they are free —For the enjoyment of all civil rights consequent to a mere residence in the country and among them the right to personal freedom as acknowledged and protected by the Laws of England in

Cases similar to that under consideration, must notwithstanding any legislative enactment that may be thought to affect it, with which I am acquainted, be extended to these Negroes as well as to all others under His Majesty's Government in this Province—

"The consequence is that should any attempt be made by any person to infringe upon this right in the persons of these Negroes, they would most probably call for, and could compel the interference of those to whom the administration of our Laws is committed and I submit with the greatest deference to Your Excellency that it would not be in the power of the Executive Government in any manner to restrain or direct the Courts or Judges in the exercise of their duty upon such an application." (*Can. Arch.*, Sundries, Upper Canada, 1819.)

4. At a meeting of the Executive Council of the Province of Lower Canada held at the Council Chamber in the Castle of St. Lewis, on Thursday, June 18, 1829, under Sir James Kempt, the Administrator of the Government, the following proceedings were had:

"Report of a Committee of the whole Council Present The Honble. the Chief Justice in the Chair, Mr. Smith, Mr. DeLery, Mr. Stewart, and Mr. Cochran on Your Excellency's Reference of a Letter from the American Secretary of State requesting that Paul Vallard accused of having stolen a Mulatto Slave from the State of Illinois may be delivered up to the Government of the United States of America together with the Slave.

"May it please Your Excellency

"The Committee have proceeded to the consideration of the subject matter of this reference with every wish and disposition to aid the Officers of the Government of the United States of America in the execution of the Laws of that Dominion and they regret therefore the more that the present application cannot in their opinion be acceded to.

"In the former Cases the Committee have acted upon the Principle which now seems to be generally understood that whenever a Crime has been committed and the Perpetrator is punishable according to the Lex Loci of the Country in which it is committed, the country in which he is found may rightfully aid the Police of the Country against which the Crime was committed in bringing the

Criminal to Justice—and upon this ground have recommended that Fugitives from the United States should be delivered up.

"But the Committee conceive that the *Crimes* for which they are authorized to recommend the arrest of Individuals who have fled from other Countries must be such as are *mala in se,* and are universally admitted to be *Crimes* in every Nation, and that the offence of the *Individual* whose person is demanded must be such as to render him liable to arrest by the Law of Canada as well as by the Law of the United States.

"The state of slavery is not recognized by the Law of Canada nor does the Law admit that any Man can be the proprietor of another.

"Every Slave therefore who comes into the Province is immediately free whether he has been brought in by violence or has entered it of his own accord; and his liberty cannot from thenceforth be lawfully infringed without some Cause for which the Law of Canada has directed an arrest.

"On the other hand, the Individual from whom he has been taken cannot pretend that the Slave has been stolen from him in as much as the Law of Canada does not admit a Slave to be a subject of property.

"All of which is respectfully submitted to Your Excellency's Wisdom." (*Can. Arch.,* State K, p. 406.)

5. At a meeting of the Executive Council for Upper Canada, held at York, on Thursday, September 12, 1833, under Sir John Colborne, Lieutenant Governor, the following proceedings were had:

"Received a Letter from the Governor of the State of Michigan dated Detroit August 12th 1833 with a new requisition for the delivery up of Thornton Blackburn and other fugitives from Justice which was read in Council on 27th August 1833 with the following opinion of the Attorney General, as referred to him 13th July 1833.

"'ATTORNEY GENERAL'S OFFICE

"'12th July 1833

"'*Sir*

"'I have the Honour to return the various papers relating to the subject of the requisition from the acting Governor of Michigan

demanding that Thornton Blackburn and others who are stated to have fled from the justice of that country and taken refuge within this Province and now in custody at Sandwich should be given up, upon which His Excellency required my opinion whether the Law of this Province authorized him in complying with such demand or not. Had His Excellency been confined to the official requisition and the deposition that accompanied it he might I think have been warranted in delivering up those persons inasmuch as there is thereupon evidence on which according to the terms of our act (3 Wm 4th, C. 8) a magistrate would have been "warranted in apprehending and committing for trial" persons so charged who is convicted of the offence alleged viz: riot and forcible rescue and assault and battery would, if convicted, have been subject according to the Laws of this Province to one of the several punishments enumerated in the act as applicable to felonies and misdemeanors.

" 'That the Governor and Council are not confined to such evidence is clear since though limited in their authority to enforce the provisions of the act against fugitives from foreign States by the condition above mentioned viz: being satisfied that the evidence would warrant commitment for trial etc. yet in coming to that conclusion they are I think bound to hear no ex parte evidence alone but matter explanatory to guide their judgment; for even tho' satisfied with their authority so to do, they are not required "to deliver up any person so charged if for any reason they shall deem it inexpedient so to do.'

"In the present case I think the evidence on oath as to facts not alluded to in the official Communication and as to the law of the United States upon the subject becomes extremely important; I mean that of Mr Cleland and Mr Alexander Fraser the Attorney for the City of Detroit. The case appears to be this—Two coloured persons named Thornton a man and his wife were claimed as slaves on behalf of some person in the State of Kentucky; that they were arrested and examined before a magistrate in Detroit and he in accordance with the law of the United States made his certificate and directed them to be delivered over as the personal property of the claimant in Kentucky; that the Sheriff took them into custody in consequence and that when one of them, (the man) was on the point of being removed from prison in order to be restored to his owner he was with circumstances of considerable violence rescued and escaped to this Province. There appears to be an error in the

deposition accompanying the requisition, the wife of Thornton is there charged with being one of the persons assisting in the riot and rescue, whereas it appears that previous to the day of her husband's rescue she had eluded the Gaoler in disguise and she was then within this Province; she therefore does not appear to come within the class of offenders which the Act contemplates—viz: 'Malefactors who having committed crimes in foreign Countries have sought an asylum in this Province.'

"With regard to Thornton himself, the Attorney of Detroit who has favoured His Excellency with a certified Copy of the Law of the United States upon the subject, declares,—that the commitment to the custody of the Sheriff was illegal—and this is urged strongly as an equitable consideration against His Excellency's interference that the Sheriff detained Thornton in custody not as Sheriff but as agent for the Slave owner and that the law does not authorize *commitments* under such circumstances to the Sheriff, but merely that 'the owner, agent, or attorney may seize and arrest the fugitive (slave) and take him before the Judge etc: who upon proof that the person seized owes service to the claimant &c shall give a certificate thereof to such claimant, his agent or Attorney which shall be sufficient Warrant for removing the said fugitive from labour &c.'

"To this argument as to the illegality of the custody I do not attach much weight, for admitting that Thornton was not committed to the custody of Mr. Wilson as Sheriff of Wayne County, still as we may presume that the Judge's Certificate was properly given, he might not be the less legally in the custody of Mr Wilson *as agent to the claimant* in Kentucky; for the next section of the act of congress enacts that anyone who '*shall rescue such fugitive from such claimant or his agent &c shall forfeit and pay the sum of five hundred dollars &c.*' That the custody was legal according to the law of the United States I have little doubt; the legality there is officially recognized by the requisition and it is not a subject for His Excellency's enquiry. Upon this view of the case and considering that His Excellency in Council can only restore fugitives charged upon evidence of crimes which if proved to have been committed in this Province would subject the offender to 'Death, Corporal punishment by Pillory or whipping or by confinement at hard labour' and considering this as a Penal Act which must not be strained beyond the literal import towards those against whom it is intended to

operate; the result is that our law recognizes no such custody as that of an agent acting under a warrant for removing a fugitive slave to the Territory from which he fled, this is an offence which could not be committed within this Province in any case and therefore that His Excellency in Council is not by the Act of this Province either required or authorized to deliver up the persons demanded.

"I have the Honor to be, Sir, &c.,
"(Signed) ROBERT S. JAMESON, *Attorney General.*"

"The Council having again had before them the requisition of the Governor of the State of Michigan relative to the escape of certain offenders into this Province deem it mainly important to their full consideration of the question that besides his opinion upon the propriety of giving up the persons alluded to the Attorney General should be requested explicitly to state whether if a similar outrage had been committed in this Province the offender or offenders would be liable to undergo any of the punishments in the act passed last Session.

"(Signed) JOHN STRACHAN, P.C."
(*Can. Arch.*, State J, p. 137.)

6. At an Executive Council for Upper Canada held at York, Tuesday, September 17, 1833, under the presidency of the Rev. Dr. Strachan, the following proceedings were had:

"The Council assembled agreeably to the desire of His Excellency the Lieutenant Governor to take into consideration the requisition of his Excellency the Governor of Michigan.

"Read the following letter.

"'ATTORNEY GENERAL'S OFFICE
"'14th September, 1833

"'*Sir*

"'To the question which the Executive Council have done me the honor to submit to me in relation to the requisition from the Governor of Michigan dated 12th August, 1833, whether if a similar outrage had been committed in this Province the offender would be liable to undergo any of the punishments stated in the Act (3 Wm 4, Cap 7) passed at the last Session I have the honor to answer

that a forcible rescue from the custody of the Sheriff of this Province attended with the aggravated circumstances detailed in the affidavit of John M. Wilson and Alexander McArthur accompanying the requisition would undoubtedly subject the offender and those actively aiding and abetting him to the gravest punishment in the act, death alone excepted.

"'I have the honor to be, Sir, &c.,
"'(Signed) ROBERT S JAMESON,
"'*Attorney General.*

"'To John Beikie, Esquire,
"'Clerk, Executive Council.'"

"The Council took the same into consideration and were pleased to make the following minute thereon.

"'The Council having had under consideration the requisition of His Excellency the Governor of Michigan together with the various papers relative thereto beg leave respectfully to state that as the question involves matters of great importance in our relations with a neighbouring state it would be satisfactory to them if the opinion of the Judges were obtained for their information.'" (*Can. Arch.*, State J. p. 148.)

7. At an Executive Council for Upper Canada held at York, September 27, 1833, under the presidency of Peter Robinson, the following proceedings were had:

"Resumed the consideration of His Excellency G. B. Porter, Esquire, Governor of Michigan's Letter of the 12th Ultimo which was read in Council on the 27th and again on the 12th and 17th Instant.

"Read also the Attorney General's opinion of the 20th Instant and the Judges' Report of this date as follows:

"'ATTORNEY GENERAL'S OFFICE
"'20th September, 1833

"'*Sir*

"'To the question which the Executive Council have done me the Honor to submit to me in relation to the requisition from the Governor of Michigan dated 12th August, 1833, whether if a similar outrage had been committed in this Province, the offender or offenders would be liable to undergo any of the punishments stated

in the Act (3 Wm. 4 c. 7) passed last Session: my opinion is that a forcible rescue from the custody of the sheriff in this Province attended with the aggravated circumstances detailed in the Affidavits of John M. Wilson and Alexander MacArthur though by the law of England it would subject the offender and those actively aiding and abetting him to severe corporal punishment, by the law of the Province as it now stands could not be visited by a graver punishment than fine and imprisonment which is not one of those enumerated in the act.

" 'I have the Honor to be, Sir, &c.,
" '(Signed) ROBERT S. JAMESON,
" '*Attorney General.*

" 'To
" 'John Beikie, Esq.,
" 'Clerk, Executive Council.'

" 'JUDGES' REPORT.
" 'York, 27th September, 1833.

" 'May it please Your Excellency

" 'We have the Honor to report to Your Excellency that we have deliberated upon the reference made to us by Your Excellency's Command on the 17th September Instant in respect to an application addressed to Your Excellency by the Government of the Territory of Michigan requesting that certain persons now inhabiting this Province may be apprehended and sent to that country to answer to a charge preferred against them for assaulting and beating the Sheriff of the County of Wayne and rescuing a prisoner from his custody. We observe that the recent act of the Legislature of this Province intituled "An Act to provide for the apprehending of fugitive offenders from foreign countries and delivering them up to Justice" (a copy of which we annex to this report) gives a discretion to the Governor and Council in carrying into effect its provisions declaring in express terms that it shall not be incumbent upon them to deliver up any person charged if for any reason they shall deem is inexpedient so to do." We take it for granted however notwithstanding the general terms in which the reference is made to us, that we are not expected to express our opinion upon what would or would not be a proper exercise of this discretion. It does not, indeed, occur to us than any question of political expediency is presented by the case and if any were, we should abstain from offering an opinion upon it.

" 'It is to the legal considerations connected with the case that we have confined ourselves; and in this view of it we beg respectfully to state that these prisoners having been once already apprehended and in custody in this Province upon this same charge and liberated by the decision of the Governor and Council after a consideration of the case upon an application made by the Government of Michigan, we should not think fit that the Governor and Council should authorize a second apprehension of the parties and exercise a second time the power and discretion given by the Act—This course we think could not be approved of unless, in the case of some atrocious offender, new and strong evidence should be discovered which it was not in the power of the foreign Government to produce upon a previous application and for the want of which the prisoners were upon such first application discharged, or perhaps in a case where some official or legal formality had by mere accident been overlooked on the first occasion.

" 'Independently of the consideration that this case has been already acted upon by the Government, the documents before us place it in this light: the prisoners with the exception of Blackburn and his wife are charged with assaulting and beating the sheriff of Wayne and rescuing a prisoner from his custody, Blackburn being the prisoner alluded to is charged with joining in the riot and battery of the Sheriff and with unlawfully rescuing himself—The wife of Blackburn we cannot find to be sufficiently charged with any offence known to our laws which do not acknowledge a state of slavery; for the imputation of conspiring with the rioters and contriving the rescue is supported by no evidence and seems to rest on conjecture—The prisoner Blackburn it appears from the Documents before us was not committed for felony nor for any crime nor imprisoned for any cause which by our laws could be recognized as a justification of imprisonment. We mention this not from any doubt that the prisoner was in legal custody according to the laws of Michigan but because the rescue of a prisoner constitutes by our law a greater or less offence according to the degree of the crime for which he was committed and this prisoner being committed for no crime and certainly not for any felony his rescue would according to our law be a misdemeanor only and a misdemeanor of that kind that the persons convicted of it would be punished by fine and imprisonment or either of them and not by any other description of punishment—The Statute referred to pro-

vides in explicit terms that the persons subject to be delivered up under it to the justice of a foreign country are those only who shall be charged "with murder, forgery, larceny or other crime committed without the jurisdiction of this Province which crimes if committed within this Province would *by the laws thereof* be punishable by *death corporal punishment* by *pillory* or *whipping* or by confinement at *hard labour.*" We are not aware whether the laws of the Territory of Michigan do or do not authorize the giving up of offenders charged with crimes not embraced in the above very comprehensive description; but however that may be, it is evident that the conduct of this and of other Governments in respect to the delivery up of offenders can be no further reciprocal towards each other than the laws of each will allow. We express no opinion except in reference to the statute recently passed here for regulating this particular matter—We consider the Legislature to have declared in that Statute their will in what cases fugitives from foreign countries should be surrendered; and we have therefore considered whether the persons in question as they are not charged with murder forgery or larceny could upon the facts before us be convicted of any other offence punishable at hard labour—We apprehend they could not be but that the offence of which they might be convicted would be punishable by fine and imprisonment merely without adding "hard labour" to the sentence. Riot, a Battery of the Sheriff in the execution of his duty, and the rescue of a person legally in his custody but not charged with felony or other crime are the offences with which upon the statements before us they are liable to be charged:—and all these are offences which in the known and ordinary administration of the law in this Province would be punished in no other manner than by fine and mere imprisonment. Instances we doubt not may be brought from distant times, in which one or other of the above offences has been punished in England by Pillory or whipping or by other unusual or disgraceful punishments and we do not say that these cases altho' they may be old are so decidedly void of all authority that a judgment which should now be passed in conformity to them would certainly be held to be erroneous and bad. But we conceive that in England such punishments have long ceased to be assigned to the offences in question; that in this Province they have never been assigned to them and that recent Statutes which have been passed in England tend strongly to show that Parliament did not regard them as punish-

ments which in later times could be properly attached to such offences without express Legislative sanction. We observe that there is evidence of one of the persons charged having pointed a loaded pistol at the Sheriff. If it had been further stated that he had pulled the trigger or otherwise attempted to discharge the pistol the act would have been one which in England is felony, having been first made so by Lord Ellenborough's Act passed in 1803; but that Act does not extend to this Province and was never adopted or in force here and if it were otherwise, still this case upon the facts stated is not within it. Looking upon the act of pointing or presenting the pistol as one for which all the rioters were equally responsible it forms an aggravation of their riot and assault but it does not change the legal character of their crime it would probably lead to a higher fine or a longer imprisonment but not to a punishment of another kind. The riot as it is described was an outrageous one and the battery of the sheriff appears to have been violent and cruel—the direct object and intent however seems to have been the rescue of the Prisoner rather than to take the life of the sheriff; and even supposing the facts would well support a conviction for an assault on the Sheriff with an intent *to murder him* still by our law such intent would be merely an aggravation of the riot and assault; it would not alter the technical character of the crime or the description of punishment however much it might enhance the fine or lead to increasing the term of Imprisonment.

" 'The conclusion therefore which we have come to is that these parties are not charged with any of the offences enumerated in the statute annexed and consequently that the Lieutenant Governor and council are not authorized by its provisions to send them out of the Province. It has not escaped our attention as a peculiar feature in this case that two of the persons whom the Government of this Province is requested to deliver up are persons recognized by the Government of Michigan as slaves and that it appears upon these documents that if they should be delivered up they would by the laws of the United States be exposed to be forced into a state of Slavery from which they had escaped two years ago when they fled from Kentucky to Detroit; that if they should be sent to Michigan and upon trial be convicted of the Riot and punished they would after undergoing their punishment be subject to be taken by their masters and continued in a state of Slavery for life, and that on the other hand if they should never be prosecuted or if they

should be tried and acquitted this consequence would equally follow. Among the Documents before us we perceive there are papers which have been delivered to the Government in behalf of the alleged rioters in which this inevitable consequence is urged as a reason against their being sent back to Michigan and in which it is intimated that to place the slaves again within the power of their masters is the principal object and that the Government of Michigan in making application for them is rather influenced by the interest and wishes of the slave owners than by any desire to bring the parties to trial for the alleged riot. No consideration of this kind has had any weight with us, for in the first place as regards the insinuation against the motives of the Government of Michigan if we had any thing to do with them we should consider (as no doubt this Government would consider in any similar case) that courtesy towards the Government of a foreign country requires always to assume that it has no motive or design on these occasions which is not just and fair and in short none but such as is openly avowed. And in the next place as to the consequence spoken of— If it would follow in course from the laws of the United States it is not probable that the Executive Government there would prevent the slave masters from asserting their rights under those laws and it is therefore reasonable to suppose that the consequence may really follow which the parties concerned have represented. Still if in this case the black people whose arrest is applied for had been shown to have fled from a charge for any such offence as would clearly come within our Statute, we do not conceive that we could on that account have advised a course to be pursued in regard to them different from that which should be pursued with respect to free white persons under the same circumstances. When we say this we should desire it to be understood that we are so clearly of opinion on the other hand, that the withdrawing from a state of Slavery in a foreign Country could not here be treated as an offence with reference to our statute already alluded to so that any person could be surrendered up under that statute upon such a ground merely. We beg leave to express to Your Excellency our regret for the delay that has occurred in answering the reference which Your Excellency and the Honorable the Executive Council have thought fit to make to us. Among other causes which have led to it was a doubt at first entertained among us whether we could properly give an opinion upon a matter which under possible cir-

cumstances might give rise to a judicial proceeding in which the same question would come before us or some one of us for decision. An examination of this subject has removed this doubt and we now submit our opinion to Your Excellency with such explanations as seemed to us to be material.

" 'We have the Honor to be
" 'Your Excellency's Most obedient
" and humble Servants
" '(Signed) " 'JOHN B. ROBINSON, C.J.
" 'L. P. SHERWOOD—J.
" 'J. B. MACAULAY—J.' "

"Upon which the council were pleased to make the following Report.

" '*To His Excellency,* Sir John Colborne, K.C.B., Lieutenant Governor of the Province of Upper Canada and Major General Commanding His Majesty's Forces therein—&c——&c &c

" 'May it please Your Excellency

" 'The Council have had under consideration the papers relating to the requisition of the acting Governor of Michigan, together with evidence furnished by His Excellency the Governor of that Territory accompanied by a further requisition for the delivery of the fugitives—they have also had before them the opinions of the three Judges and of the Attorney General with which they concur and have been led to the conclusion that the fugitive Slaves named in the requisitions are not charged with an offence which would have rendered them liable to any of the punishments enumerated in the Provincial Statute and consequently that the Lieutenant Governor and Council are not authorized by its provisions to send them out of the Province.' " (*Can. Arch.*, State J, p. 155.)

8. At an Executive Council for Upper Canada held at Toronto, Saturday, September 9, 1837, under the presidency of the Honourable William Allen, the following proceedings were had:

"Read the Attorney General's Report of the 8th instant on Documents for the surrender of Jesse Happy, a fugitive from Justice in the United States charged with horse stealing—upon which the Council made the following Report

" 'The Council have taken into serious consideration the Documents with the Reports of the Attorney General

" 'A similar application referred for the Report of the Council on the 7th Instant—In that case as in the present it was suggested that the fugitive was a slave, and that the real object of the application was not so much to bring him to trial for the alleged Felony as to reduce him again to a state of Slavery—In that case however it appeared that the Offence had been recently committed viz: in May last—That an early occasion, probably the first, was taken to have him indicted—that process for his apprehension immediately issued and that shortly after the return of the Sheriff to that process the requisition from His Excellency the Governor of the State of Kentucky was obtained and promptly brought to this Province. Under these circumstances the Council were of opinion that in the exercise of a sound discretion they were called upon to recommend to Your Excellency to comply with the requisition—The facts appearing upon the Official Documents in this case are widely different—The Alleged Offence purports to have been committed more than four years ago. When the Indictment was preferred is not shown (as it was in the former case) but the earliest date which shows its existence is 1st June 1835 when the certificate of the Clerk of the Court is given. No process seems to have been issued in the State of Kentucky nor is any other step shown to have been taken until the middle of last month. There also it is suggested that the fugitive is a slave that the real object of his apprehension is to give him up to his former owners and so to deprive him of that personal liberty which the laws of this country secure him. If this be conceded in the present instance after a lapse of four years, no argument could be consistently urged against the delivery up (on the uusal application) of persons who have been still longer resident in this Province.

" 'The delivery of a Slave under these circumstances to the authorities claiming him would it is clear subject him to a double penalty, the one of punishment for a crime, the other of a return to a state of Slavery, even if he should be acquitted. The former in strict accordance with our Statute, the other in direct opposition to the genius of our institutions and the spirit of our Laws. For this cause the Council feel great difficulty in the course which they would advise Your Excellency to adopt, were there any law by which, after taking his trial and if convicted undergoing his sen-

tence he would be restored to a state of freedom, the Council would not hesitate to advise his being given up but there is no such provision in the Statute.

"'On the other hand the Council feel that it cannot be permitted that because a man may happen to be a fugitive slave he should escape those consequences of crime committed in a foreign country to which a free man would be amenable. This would be equally contrary to the Law and to the spirit of mutual justice which gave origin to it, in this Province as well as in the United States. Considering however the circumstances of this case and also the difficulty that might arise from it as a precedent the Council respectfully recommend that time should be given to the accused to furnish affidavits of the facts set forth in the Petition presented on his behalf in order to a full understanding of the whole matter.

"'The Council would further respectfully submit to Your Excellency the propriety of drawing the attention of Her Majesty's Government to this question with a view of ascertaining their views upon it as a matter of general policy.'" (*Can. Arch.*, State J, p. 597.)